

Message

From: Kupchan, Simma [Kupchan.Simma@epa.gov]
Sent: 10/31/2018 9:45:52 PM
To: Hicks, Matt [Hicks.Matthew@epa.gov]
CC: Calli, Rosemary [Calli.Rosemary@epa.gov]
Subject: Re: proposed responses to FDEP's assumption questions

Thanks! I will report out at 11.

Simma

On Oct 31, 2018, at 5:11 PM, Hicks, Matt <Hicks.Matthew@epa.gov> wrote:

That makes sense to me. Rosemary is gone for the day but I will notify Tom and Leif about the plan and that we can expect to hear from you or David sometime after your 10 am meeting.

From: Kupchan, Simma
Sent: Wednesday, October 31, 2018 5:06 PM
To: Hicks, Matt <Hicks.Matthew@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: RE: proposed responses to FDEP's assumption questions

☺. Ok – after looking at our exchanges, I think it might be simplest to discuss this with David in person. I happen to have our Weekly with David tomorrow morning at 10. It might be easiest to follow up with him in person than write a lengthy defense of this phraseology switch via email. Does that make sense? I will pitch our proposal tomorrow morning, and then can follow up with you? If he is ok with it, we can memorialize in writing in a follow up email.

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Hicks, Matt
Sent: Wednesday, October 31, 2018 5:01 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: RE: proposed responses to FDEP's assumption questions

You have other cases?

From: Kupchan, Simma
Sent: Wednesday, October 31, 2018 5:00 PM
To: Hicks, Matt <Hicks.Matthew@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: RE: proposed responses to FDEP's assumption questions

So sorry for the delay – lots of fire drills today. Looking at this right now.

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q

From: Hicks, Matt

Sent: Wednesday, October 31, 2018 3:48 PM

To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>

Subject: RE: proposed responses to FDEP's assumption questions

Also, I just spoke with Rosemary and we both agree that it would be best to not include **Ex. 5 AC/DP**

Ex. 5 AC/DP

From: Hicks, Matt

Sent: Wednesday, October 31, 2018 3:11 PM

To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>

Subject: RE: proposed responses to FDEP's assumption questions

Ex. 5 AC/DP

From: Kupchan, Simma

Sent: Wednesday, October 31, 2018 2:19 PM

To: Hicks, Matt <Hicks.Matthew@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>

Subject: RE: proposed responses to FDEP's assumption questions

Hi,

I just spoke briefly to Rosemary, and her points did make sense to me, but upon going back to David's original question, I'm not sure I know how to answer his first question. Do you have a proposed response? I want to make sure we see a clear distinction and that we can answer his question before going back to him. I would want to directly respond to the questions he asked if we are going to push back.

Let me know what you think. Thank you!

Ex. 5 AC/DP

Ex. 5 AC/DP

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Hicks, Matt
Sent: Wednesday, October 31, 2018 12:36 PM
To: Calli, Rosemary <Calli.Rosemary@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>
Subject: RE: proposed responses to FDEP's assumption questions

I like but the message I got from Simma is that David F did not like our edit to the wetland impact phrase so not sure if he would go for these changes either. Simma?

From: Calli, Rosemary
Sent: Wednesday, October 31, 2018 12:13 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>
Subject: RE: proposed responses to FDEP's assumption questions

I like the mitigation paragraph edit, Simma, and agree with most of these comments.

Ex. 5 Deliberative Process (DP)

From: Kupchan, Simma
Sent: Wednesday, October 31, 2018 11:04 AM
To: Hicks, Matt <Hicks.Matthew@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: RE: proposed responses to FDEP's assumption questions

My responses below. If anything is unclear, may be easiest to talk. I am at the number below. Thanks, Matt!

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Hicks, Matt
Sent: Wednesday, October 31, 2018 10:51 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: RE: proposed responses to FDEP's assumption questions

I like your edits to the mitigation paragraph and I agree with your suggestions for moving this along but before I talk with Leif I wanted to clarify a few things:

- 1.
- 2.
- 3.

Ex. 5 Deliberative Process (DP)

From: Kupchan, Simma
Sent: Wednesday, October 31, 2018 10:24 AM
To: Hicks, Matt <Hicks.Matthew@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: RE: proposed responses to FDEP's assumption questions

Thanks so much, Matt, for the follow up with Leith. I agree with all of the points you made, and also agree that this is not something it makes sense to push back on.

Ex. 5 Deliberative Process (DP)

Finally, perhaps we could edit the mitigation paragraph along the lines of the following, though feel free to edit:

Ex. 5 Deliberative Process (DP)

As next steps, **Ex. 5 Deliberative Process (DP)** unless Leif wants to follow up with David on that approach, and take his other edits and suggestions, and Leif can send confirmation of that to David?

Or let me know if any other approach would be better. Thanks!

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Hicks, Matt
Sent: Wednesday, October 31, 2018 9:46 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: FW: proposed responses to FDEP's assumption questions

Leif emailed me with the following comment/question:

Ex. 5 AC/DP

From: Fotouhi, David
Sent: Tuesday, October 30, 2018 7:30 PM
To: Palmer, Leif <Palmer.Leif@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>

Cc: Glenn, Trey <Glenn.Trey@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>

Subject: RE: proposed responses to FDEP's assumption questions

My comments and suggestions are tracked in the attached document. Please let me know if you would like to discuss.

Best,

David

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Palmer, Leif

Sent: Thursday, October 25, 2018 7:02 PM

To: Fotouhi, David <Fotouhi.David@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>

Cc: Glenn, Trey <Glenn.Trey@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>

Subject: FW: proposed responses to FDEP's assumption questions

Importance: High

Matt & David – as mentioned on today's OGC call we've worked out responses to FDEP's latest questions. Trey asked me to forward this to you for your thoughts.

Matt Hicks' email below provides context.

Leif Palmer
Regional Counsel
US EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
(404) 562-9542

Ex. 6 Personal Privacy (PP) (cell)

This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

From: Hicks, Matt

Sent: Tuesday, October 23, 2018 5:51 PM

To: Palmer, Leif <Palmer.Leif@epa.gov>

Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>

Subject: FW: proposed responses to FDEP's assumption questions

Importance: High

Leif,

Here's EPA's proposed response to the two recent questions we received from DEP on Friday. These proposed responses were generated by the Region 4 team (Tom McGill level) after consulting with Simma (both issues) and Alexis (mitigation issue only) at OGC. DEP is waiting to hear from us before moving forward with their rulemaking so time is of the essence. More internal discussion is needed on the issue of incorporating retained waters list into EPA's Federal Register notice approving the state's program but that issue is not as time critical as the two below.

Ex. 5 AC/DP

Please call me if you'd like to discuss further.

Thanks,

Matt

From: McGill, Thomas

Sent: Tuesday, October 23, 2018 5:10 PM

To: Zapata, Cesar <Zapata.Cesar@epa.gov>

Cc: Calli, Rosemary <Calli.Rosemary@epa.gov>; Purify, Johnnie <Purify.Johnnie@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Allenbach, Becky <Allenbach.Bekky@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Parker, Christopher <Parker.Christopher@epa.gov>

Subject: proposed responses to FDEP's assumption questions

Importance: High

Cesar,

As a follow-up to our conversation yesterday, FDEP would appreciate EPA's quick feedback on questions they asked during calls held with some of EPA's assumption team members on Oct 19 and 22nd. You'll recall that I forwarded you an email from Matt Hicks on Oct 19 regarding their basic questions, and we received additional clarification with FDEP staff in a call held on Oct 22. We understand that FDEP is awaiting EPA's feedback prior to proceeding with their Notice of Proposed Rulemaking and that FDEP would prefer EPA's feedback through a conversation instead of in writing.

Attached is a document drafted by the EPA Assumption Team that includes: (1) FDEP's questions (highlighted in blue text); (2) proposed EPA responses (highlighted in yellow text); and (3) other information to provide background/context for FDEP's questions and/or the proposed responses. We would appreciate feedback from the RA and the senior leaders at OGC/OW as quickly as they can provide it before responding to FDEP.

If you have any questions or need any additional information please let us know.

Thanks.

Tom